

O

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

GLORIA ASHBY,)	Case No. EDCV 08-00655-MLG
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social)	
Security,)	
)	
)	
Defendant.)	
_____)	

Plaintiff Gloria Ashby seeks judicial review of the Commissioner's denial of her application for Social Security Disability Insurance ("SSDI") benefits and Supplemental Security Income ("SSI") benefits under the Social Security Act. For the reasons stated below, the decision of the Social Security Commissioner is **AFFIRMED**.

I. Facts and Procedural History

Plaintiff was born on February 9, 1952. She has a high school education. (Administrative Record ("AR") 97, 120.) Plaintiff's work history includes employment as a registration clerk, office manager, and

1 purchasing assistant/office helper. (AR 113.) Plaintiff has not been
2 gainfully employed since April 22, 2004, the alleged onset date of
3 disability. (AR 13.) Plaintiff claims to be disabled due to Hashimoto
4 thyroiditis, heart problems, forgetfulness, body aches, medication
5 sensitivity, hair loss. She was also diagnosed with and treated for
6 breast cancer, and she has been diagnosed as obese.

7 Plaintiff filed applications for SSDI and SSI benefits on September
8 21, 2005. (AR 11.) The Commissioner denied Plaintiff's application
9 initially on November 16, 2005, and again upon reconsideration, on
10 February 23, 2006. (*Id.*) Administrative Law Judge ("ALJ") Thomas J. Gaye
11 held a hearing October 5, 2007, at which Plaintiff testified and was
12 represented by counsel. A vocational expert also testified.

13 The ALJ denied Plaintiff's applications on December 14, 2007. (AR
14 16.) The ALJ applied the five-step sequential analysis mandated by the
15 Social Security Regulations¹ in reaching his decision. The ALJ found that
16 Plaintiff has several severe impairments, stating that she "is status
17 post radioiodine ablation for Graves Disease (4/05), has hypothyroidism,
18 is status post left breast cancer surgery (3/07), chemotherapy and
19 radiation, has anxiety and depression." (AR 13.) After determining that
20 Plaintiff's severe impairments did not meet or equal any listed
21 impairment, the ALJ found that Plaintiff had the residual functional
22 capacity ("RFC") to perform light work with no climbing of ladders,
23

24 ¹ The ALJ must consider the following questions in evaluating a
25 claimant's disability: (1) whether the claimant is engaged in
26 substantial gainful activity; (2) whether the claimant's impairment is
27 "severe"; (3) whether the impairment meets or equals one of the listings
28 in 20 C.F.R. § 404, Subpart P, Appendix 1; (4) whether the claimant is
able to return to past relevant work; and (5) whether the claimant can
do other types of work. 20 C.F.R. § 404.1520(a)(4). These steps are
cumulative, meaning that the ALJ need not consider further steps after
finding that a step does not favor the claimant.

1 ropes, or scaffolds; occasional balancing, stooping, kneeling,
2 crouching, and crawling; and no concentrated exposure to extreme heat or
3 cold or hazards. (AR 14.) Additionally, the ALJ found that Plaintiff had
4 a mental residual functional capacity of moderate limitations in
5 understanding and remembering detailed instructions and moderate
6 limitations in carrying out detailed instructions. (*Id.*) The ALJ
7 concluded that Plaintiff could return to her past relevant work as an
8 office helper and was not disabled as defined by the Social Security Act
9 at any time through the date of the decision. (AR 19.)

10 The Social Security Appeals Council denied Plaintiff's request for
11 review of the ALJ's decision on April 25, 2008. (AR 4.) Plaintiff then
12 filed this action on May 20, 2008. Plaintiff alleges that the ALJ erred
13 by: (1) failing to properly consider Plaintiff's obesity and its impact
14 on her other impairments; (2) failing to properly consider the actual
15 physical and mental demands of Plaintiff's past relevant work; (3)
16 failing to pose a complete hypothetical to the vocational expert; and
17 (4) failing to properly consider the lay witness testimony. (Joint Stip.
18 2-3.) Plaintiff asks this Court to order an award of benefits, or, in
19 the alternative, to remand for a new administrative hearing. (Joint
20 Stip. 22.)

21 22 **II. Standard of Review**

23 The Court must uphold the Social Security Administrations's
24 disability determination unless it is not supported by substantial
25 evidence or is based on legal error. *Ryan v. Comm'r of Soc. Sec.*, 528
26 F.3d 1194, 1198 (9th Cir. 2008)(citing *Stout v. Comm'r of Soc. Sec.*
27 *Admin.*, 454 F.3d 1050, 1052 (9th Cir. 2006)). Substantial evidence means
28 more than a scintilla, but less than a preponderance; it is evidence

1 that a reasonable person might accept as adequate to support a
2 conclusion. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir.
3 2007)(citing *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir.
4 2006)). To determine whether substantial evidence supports a finding,
5 the reviewing court "must review the administrative record as a whole,
6 weighing both the evidence that supports and the evidence that detracts
7 from the Commissioner's conclusion." *Reddick v. Chater*, 157 F.3d 715,
8 720 (9th Cir. 1996). "If the evidence can support either affirming or
9 reversing the ALJ's conclusion," the reviewing court "may not substitute
10 [its] judgment for that of the ALJ." *Robbins*, 466 F.3d at 882.

11 12 **III. Analysis**

13 **A. Whether the ALJ Properly Considered Plaintiff's Obesity and** 14 **Its Impact on Her Impairments**

15 Plaintiff contends that the ALJ erred by failing to consider the
16 impact of Plaintiff's obesity at each level of the five-step analysis.
17 Specifically, Plaintiff contends that the ALJ did not consider whether
18 Plaintiff's obesity was a severe impairment at step two, he did not
19 determine whether Plaintiff's obesity and other impairments combined to
20 meet a listed impairment at step three, and he did not incorporate
21 Plaintiff's limitations stemming from obesity into the RFC
22 determination. Plaintiff's arguments are without merit.

23 Obesity is a severe impairment at step two "when, alone or in
24 combination with another medically determinable physical or mental
25 impairment(s), it significantly limits an individual's physical or
26 mental ability to do basic work activities." SSR 02-1P, 2000 WL 628049,
27 at *4 (S.S.A. Sept. 12, 2002). As discussed above, the ALJ concluded
28 Plaintiff had several severe impairments, stating that she "is status

1 post radioiodine ablation for Graves Disease (4/05), has hypothyroidism,
2 is status post left breast cancer surgery (3/07), chemotherapy and
3 radiation, has anxiety and depression." (AR 13.) The ALJ did not find
4 that Plaintiff's obesity was severe.

5 Contrary to Plaintiff's contention that the ALJ "totally failed to
6 consider plaintiff's obesity in his decision," (Joint Stip. 6), the ALJ
7 did consider Plaintiff's obesity, and he concluded that it did not have
8 a significant impact on her physical abilities or functioning. (AR 18.)
9 The ALJ stated, "Claimant gained 20 pounds during this period and is
10 obese, but [her roommate's] report indicates claimant is fully
11 functional in terms of her physical abilities." (AR 18.) The ALJ noted
12 that Plaintiff provided in-home health care for her roommate, and that
13 she "has been able to keep track of both her medications and [the
14 roommate's]..., [s]he can drive, keep medical appointments, cook, perform
15 all household chores and otherwise provide ongoing care for herself and
16 her roommate." (*Id.*)

17 In making her argument, Plaintiff relies on *Celaya v. Halter*, 332
18 F.3d 1177 (9th Cir. 2003). In that case, the Ninth Circuit reversed the
19 Commissioner's finding of nondisability because the ALJ failed to
20 consider to what extent the plaintiff's obesity negatively impacted her
21 other impairments, her ability to work, and her general health. *Id.* at
22 1182. The court concluded that the ALJ should have considered the
23 plaintiff's obesity, even though the plaintiff herself did not raise the
24 issue, for several reasons:

25 First, it [the obesity] was raised implicitly in Celaya's
26 report of symptoms. Second, it was clear from the record that
27
28

1 Celaya's obesity was at least close to the listing criterion,²
2 and was a condition that could exacerbate her reported
3 illnesses. Third, in light of Celaya's pro se status, the
4 ALJ's observation of Celaya and the information on record
5 should have alerted him to the need to develop the record in
6 respect to her obesity.

7 *Id.* The court noted that the ALJ did not consider the plaintiff's
8 obesity even implicitly in evaluating her impairments, and that an ALJ
9 has a heightened duty to develop the record when the claimant is not
10 represented by counsel. *Id.*

11 In a more recent case, *Burch v. Barnhart*, the Ninth Circuit
12 distinguished *Celaya* where the record did not demonstrate that the
13 plaintiff's obesity exacerbated her other impairments and because she
14 was represented by counsel. 400 F.3d 676, 682 (9th Cir. 2005). The
15 court, quoting the district court's opinion, explained,

16 There was no evidence before the ALJ, and none in the record,
17 which states that claimant's obesity limits her functioning.
18 Neither treatment notes nor any diagnoses addressed claimant's
19 limitations due to obesity. The medical record is silent as to
20 whether and how claimant's obesity might have exacerbated her
21 condition. Moreover, claimant did not present any testimony or
22 other evidence at her hearing that her obesity impaired her
23 ability to work.

24 *Id.* at 683. The court concluded that the ALJ had not erred by failing to
25 consider the impact of the plaintiff's obesity on her impairments or
26 general functioning.

27 ² At one point, obesity was a listed impairment. However, it was
28 removed as a listed impairment in 1999.

1 The present case more closely resembles *Burch* than *Celaya*. As in
2 *Burch*, although Plaintiff's physicians noted her weight in treatment
3 notes, it does not appear that any physician indicated Plaintiff's
4 obesity either caused or exacerbated her impairments, or resulted in any
5 functional limitations whatsoever. Plaintiff has identified no medical
6 records that the ALJ might have overlooked stating otherwise.
7 Additionally, Plaintiff did not raise her obesity as an impairment or
8 limitation in her application for benefits or in her hearing testimony,
9 focusing entirely on her other impairments. She had an attorney at the
10 hearing, and neither of them offered any evidence or explanation to show
11 how Plaintiff's obesity limited her ability to function. Even now,
12 Plaintiff has failed to identify any concrete limitations, stating only
13 that obesity's effect on the cardiovascular and respiratory systems in
14 general "explain why ... Plaintiff is frequently fatigued and in pain."
15 (Joint Stip. 4.) Plaintiff has identified no physician who opined that
16 obesity caused her fatigue or pain. She simply argues that obesity is
17 hard on a person's body, and it might have had some impact on hers,
18 without referencing any support in the record that such was actually the
19 case.

20 After describing in detail Plaintiff's medical record and the
21 various physicians' opinions, along with the statement Plaintiff's
22 roommate submitted in support of her application, the ALJ determined
23 that Plaintiff's obesity had no significant impact on her ability to
24 work. It is clear from the ALJ's detailed discussion of Plaintiff's
25 medical record, including her obesity, that he considered all of her
26 impairments in evaluating the extent to which Plaintiff's impairments
27 limited her functioning. That the ALJ did not expressly state that
28 Plaintiff's obesity was not a severe impairment, or did not expressly

1 state that it had no effect on the RFC determination, does not warrant
2 remand. See *Burch*, 400 F.3d at 682, 684.

3 Plaintiff also argues that the ALJ should have determined whether
4 her obesity meets the requirements of a listing at step three. (Joint
5 Stip. 6.) The listings describe "for each of the major body systems,
6 [those] impairments which are considered severe enough to prevent a
7 person from doing any gainful activity, regardless of his or her age,
8 education, or work experience." 20 C.F.R. § 404.1525(a). If the ALJ
9 determines that a claimant's impairment or combination of impairments
10 meets or medically equals a listed impairment, then the claimant is
11 considered disabled. An ALJ should consider the effects of obesity in
12 determining whether a claimant meets or equals a listed impairment.
13 S.S.R. 02-1P, 2000 WL 628049, at *1 (S.S.A. Sept. 12, 2002).

14 Plaintiff contends that "the ALJ did not consider the Plaintiff's
15 obesity in combination with her other impairments to determine if she
16 meets the requirements of a separate Listing." (Joint Stip. 6.)
17 Plaintiff does not identify which listing she believes her impairments
18 meet. Instead, she simply describes the impact obesity might have on
19 various body functions. Quoting Social Security Ruling 02-1P, Plaintiff
20 notes that "obesity affects the cardiovascular and respiratory systems
21 because of the increased workload the additional body mass places on
22 these systems.... Because the body is working harder at rest, its
23 ability to perform additional work is less than would otherwise be
24 expected." (Joint Stip. 4.) Plaintiff then states, "These medical facts
25 regarding the cardiovascular and respiratory systems help to explain
26 why, in the present case, Plaintiff is frequently fatigued and in pain."
27 (*Id.*) Fatigue and pain are not a listed impairment. Plaintiff offers no
28 further explanation of how her impairments, including obesity, meet a

1 listed impairment.

2 In *Burch*, the court noted that the plaintiff bears the burden of
3 proving she has an impairment that meets or equals a listed impairment.
4 400 F.3d at 683. As in the present case, the plaintiff in *Burch*
5 presented no evidence showing that her obesity met or equaled a listed
6 impairment, nor did she even identify which listing she believed she met
7 or equaled. The court stated, "An ALJ is not required to discuss the
8 combined effects of a claimant's impairments or compare them to any
9 listing in an equivalency determination, unless the claimant presents
10 evidence in an effort to establish equivalence." *Id.* Here, Plaintiff has
11 offered no evidence showing that her obesity, alone or in combination
12 with her other impairments, met or equaled any specific listed
13 impairment. The ALJ did not err by excluding reference to her obesity in
14 evaluating step three.

15 The ALJ properly considered Plaintiff's obesity in evaluating the
16 five steps of the disability analysis. Plaintiff is not entitled to
17 relief on this claim.

18 **B. Whether the ALJ Properly Considered the Mental and Physical**
19 **Demands of Plaintiff's Past Relevant Work**

20 The ALJ concluded at step four that Plaintiff was capable of
21 performing her past relevant work as an office helper. In doing so, he
22 relied on the examining physician's opinion and the vocational expert's
23 testimony. (AR 18-19.) Plaintiff argues that the ALJ failed to provide
24 a sufficient rationale for concluding that Plaintiff was capable of
25 performing her past work as an office helper, in that the ALJ's opinion
26 did not include specific findings as to the mental and physical demands
27 of the work itself. (Joint Stip. 13.) Plaintiff also contends that the
28 ALJ's decision at step four was not supported by substantial evidence.

1 (Joint Stip. 16.) Plaintiff's arguments are not persuasive.

2 **1. Plaintiff's Residual Functional Capacity**

3 Before evaluating whether Plaintiff's impairments precluded her
4 from returning to her past relevant work as an office helper, the ALJ
5 was required to ascertain Plaintiff's residual functional capacity
6 ("RFC"). 20 C.F.R. § 404.1520(a)(4)(iv). A claimant's RFC is what she is
7 capable of doing despite her physical and mental limitations. 20 C.F.R.
8 § 404.1545(a)(1); *Cooper v. Sullivan*, 880 F.2d 1152, 1155 n.5 (9th Cir.
9 1989). "RFC is an assessment of an individual's ability to do sustained
10 work-related physical and mental activities in a work setting on a
11 regular and continuing basis." SSR 9608p, 1996 WL 374184, at *1 (S.S.A.
12 July 2, 1996). An RFC assessment is ultimately an administrative finding
13 reserved to the Commissioner, based on all of the relevant evidence,
14 including the diagnoses, treatment, observations, and opinions of
15 medical sources, such as treating and examining physicians. 20 C.F.R. §
16 404.1527(e)(2).

17 In the present case, the ALJ considered the medical records,
18 physicians' opinions, hearing testimony, and a lay witness's statement
19 regarding Plaintiff's alleged limitations in determining her RFC, along
20 with Plaintiff's credibility in describing her symptoms and limitations.
21 The ALJ concluded that Plaintiff's statements as to her level of
22 impairment were not entirely credible and that the medical record did
23 not demonstrate an inability to work. (AR 18-19.) The ALJ noted that
24 Plaintiff has not pursued mental health treatment for depression or
25 anxiety, nor has she "received regular medical care despite her
26 complaints of severe pain, depression and other symptoms." (AR 18.) The
27 ALJ stated that Plaintiff appears to have recovered from breast cancer
28 after treatment, with no evidence of recurrence, and that the condition

1 would not be expected to last for at least twelve consecutive months.
2 The ALJ also noted that although Plaintiff claims she has difficulty
3 with her memory and concentration, she still managed to take care of
4 herself and provide in-home health care for her roommate. (*Id.*) The ALJ
5 concluded that Plaintiff failed to show her impairments "have caused, or
6 can be expected to cause, the level of symptomology, pain and functional
7 restriction which she alleges renders her disabled." (*Id.*) Plaintiff
8 does not challenge the ALJ's credibility determination.

9 The ALJ adopted the examining physician's opinion that Plaintiff
10 had the RFC to perform light work with no climbing of ladders, ropes, or
11 scaffolds; occasional balancing, stooping, kneeling, crouching, and
12 crawling; no concentrated exposure to extreme heat or cold or hazards;
13 with moderate limitations in understanding and remembering detailed
14 instructions and in carrying out detailed instructions. (AR 14.) This
15 determination is supported by substantial evidence in the record.

16 **2. Plaintiff's Past Relevant Work**

17 Plaintiff's past relevant work experience is a purchasing
18 assistant/office helper. The Dictionary of Occupational Titles ("DOT")
19 defines "purchasing assistant" as follows:

20 Compiles information and records to prepare purchase orders
21 for procurement of material for industrial firm, governmental
22 agency, or other establishment. Verifies nomenclature and
23 specifications of purchase requests. Searches inventory
24 records or warehouse to determine if material on hand is in
25 sufficient quantity. Consults catalogs and interviews
26 suppliers to obtain prices and specifications. Types or writes
27 invitation-of-bid forms and mails forms to supplier firms or
28 for public posting. Writes or types purchase order and sends

1 copy to supplier and department originating request. Compiles
2 records of items purchased or transferred between departments,
3 prices, deliveries, and inventories. Computes total cost of
4 items purchased, using calculator. Confers with suppliers
5 concerning late deliveries. May compare prices,
6 specifications, and delivery dates and award contract to
7 bidders or place orders with suppliers or mail order firms.
8 May verify bills from suppliers with bids and purchase orders
9 and approve bills for payment. May classify priority
10 regulations.

11 DICOT 249.367-066.

12 The vocational expert, relying on the DOT definition of purchasing
13 assistant, testified at the hearing that a person with Plaintiff's
14 background, RFC, and additional limitations as described by the ALJ
15 would be able to work as a purchasing assistant. The vocational expert
16 explained that the position was sedentary and semi-skilled. (AR 472.)
17 Plaintiff then clarified that her actual position, though titled
18 purchasing assistant, consisted of being an office helper, which meant
19 she answered phones, did filing, and did some research. (*Id.*) She
20 testified that the woman she worked for would not permit her to learn
21 the position during the three or four months that she worked there.
22 (*Id.*) The vocational expert noted that office assistant is an unskilled
23 position. (AR 473.)

24 The ALJ accepted the vocational expert's opinion and determined
25 that Plaintiff would be able to perform her past relevant work as she
26 described it at the hearing. (AR 19.) He stated:

27 The vocational expert testified that claimant's past relevant
28 work was performed as that of an office helper, sedentary,

1 unskilled work, based upon her description of this job at the
2 hearing. In comparing the claimant's residual functional
3 capacity with the physical and mental demands of this work,
4 the undersigned finds that the claimant is able to perform it
5 as actually performed as the vocational expert testified.

6 (AR 19.)

7 Plaintiff contends that the ALJ should have been more specific in
8 his analysis of the interaction between Plaintiff's RFC and her past
9 relevant work. (Joint Stip. 14.) In assessing a claimant's ability to
10 perform past relevant work, an ALJ may consider the physical and mental
11 demands of the job either as actually performed or as usually performed
12 in the general economy. SSR 82-62, 1982 WL 31386, at *3 (S.S.A. 1982)
13 ("The RFC to meet the physical and mental demands of jobs a claimant has
14 performed in the past (either the specific job a claimant performed or
15 the same kind of work as it is customarily performed throughout the
16 economy) is generally a sufficient basis for a finding of 'not
17 disabled.'"). "The claimant is the primary source for vocational
18 documentation, and statements by the claimant regarding past work are
19 generally sufficient for determining the skill level; exertional demands
20 and nonexertional demands of such work. *Id.* The ALJ was entitled to rely
21 on Plaintiff's description of her past relevant work as actually
22 performed in determining whether she could still perform such work.

23 Plaintiff argues that the ALJ failed to provide a logical, orderly
24 rationale for concluding that Plaintiff could perform her past relevant
25 work. Relying on Social Security Ruling 82-62, Plaintiff contends that
26 the ALJ needed (and failed) to make a finding of fact as to her RFC, a
27 finding of fact as to the physical demands of the past work, and a
28 finding of fact that her RFC would permit a return to this work. (Joint

1 Stip. 14.) However, the ALJ made all of these findings: he made a
2 finding of fact as to Plaintiff's RFC, as described above, he adopted
3 the physical and mental demands of Plaintiff's past relevant work as she
4 described it, and he specifically stated that "comparing the claimant's
5 residual functional capacity with the physical and mental demands of
6 this work," Plaintiff could still perform that job. (AR 19.) In making
7 these findings, the ALJ relied on the vocational expert's testimony that
8 Plaintiff could perform her past relevant work. The ALJ was entitled to
9 rely on the vocational expert's opinion in reaching the disability
10 determination. See 20 C.F.R. § 416.960(b)(2) (ALJ may rely on a
11 vocational expert's "expertise and knowledge concerning the physical and
12 mental demands of a claimant's past relevant work, either as the
13 claimant actually performed it or as generally performed"). The ALJ
14 applied the correct legal standard and his decision is supported by
15 substantial evidence in the record.

16 **C. Whether the ALJ Posed a Complete Hypothetical to the**
17 **Vocational Expert**

18 Plaintiff argues that the ALJ failed to pose a complete
19 hypothetical to the vocational expert because he did not include
20 Plaintiff's obesity as a limitation. (Joint Stip. 18.) A hypothetical
21 posed to a vocational expert must contain all the limitations of a
22 particular claimant. *DeLorme v. Sullivan*, 924 F.2d 841, 850 (9th Cir.
23 1991)(citations omitted). However, the ALJ need only include in the
24 hypothetical those limitations that are supported by substantial
25 evidence in the record. *Osenbrock v. Apfel*, 240 F.3d 1157, 1164-65 (9th
26 Cir. 2001). Having determined that Plaintiff's obesity was not a
27 significant limitation to her functioning, the ALJ appropriately omitted
28 reference to her obesity in posing the hypothetical to the vocational

1 expert. Plaintiff is not entitled to relief on this claim.

2 **D. Whether the ALJ Properly Considered the Lay Witness Testimony**

3 Plaintiff contends that the ALJ failed to incorporate a function
4 report submitted by Plaintiff's roommate, in which he offered his
5 observations of her limitations. (Joint Stip. 19; AR 79-86.) The ALJ
6 summarized Woods' statement as follows:

7 Oliver Woods, claimant's friend, completed a functional report
8 on February 3, 2006[.]. He reported that claimant dressed him,
9 made his meals, watered and fed the dogs, washing laundry,
10 watered plants, took him to appointments and gave him his
11 medications, monitored his blood level and bathed him. Mr.
12 Woods noted that claimant's personal care had decreased
13 compared to before her illness. He stated that she was a
14 grouch and tired and hurt all the time. He reported that
15 claimant's pain level was very high and that her joints and
16 muscles were stiff and painful.

17 (AR 16.) Plaintiff contends that the ALJ erred because he "merely
18 summarized the testimony and failed to explain whether [he] accepted or
19 rejected the lay witness testimony." (Joint Stip. 20.)


20 A lay witness can provide testimony about a plaintiff's symptoms
21 and limitations. See *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir.
22 1996). "Lay testimony as to a claimant's symptoms is competent evidence
23 that an ALJ must take into account, unless he or she expressly
24 determines to disregard such testimony and give reasons germane to each
25 witness for doing so." *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir.
26 2001); see also *Dodrill v. Shalala*, 12 F.3d 915, 918-19 (9th Cir. 1993).
27 Appropriate reasons include testimony unsupported by the medical record
28 or other evidence and inconsistent testimony. *Lewis*, 236 F.3d at 512.

1 The record demonstrates that the ALJ did consider and give proper
2 weight to the evidence from Plaintiff's roommate. The ALJ specifically
3 cited the function report, noting that despite the statements of
4 constant pain and significant limitations, Plaintiff managed to take
5 care of herself, her roommate, the house, and the pets. (AR 18.) The ALJ
6 concluded that the report indicated that Plaintiff "was fully functional
7 in terms of her physical abilities." (*Id.*) The ALJ's conclusion is
8 supported by the report and substantial evidence in the record.
9 Plaintiff is not entitled to relief on this claim.

10
11 **IV. Conclusion**

12 For the reasons stated above, the decision of the Social Security
13 Commissioner is **AFFIRMED**.

14
15 DATED: August 17, 2009

16
17
18
19 

MARC L. GOLDMAN
United States Magistrate Judge